IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12295 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI MAGANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner No. 1

Mr.V.M.Pancholi, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/02/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner has challenged the order of detention dated 12-11-2002 passed against him by the District Magistrate, Kheda, Nadiad, whereby the petitioner has been detained under subsection 2 of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM" for short).

2. The grounds of detention served upon the petitioner alongwith the order of detention indicate that the petitioner is the Chairman of a Co-operative Society known as Mahij Seva Sahakari Mandali", holding a licence for running a fair price shop in the village. It is alleged against the petitioner that at the time of inspection at the said fair price shop, it was found that the society diverted illegally certain quantity of blue kerosene which is an essential commodity and sold the same by charging a higher price, and accordingly, the petitioner has indulged himself in blackmarketing with the help of the Secretary of the Society. At the time of inspection, the Inquiry Officer has also seized certain cards and also recorded the statement of certain card holders. Ultimately, the Sponsoring Authority forwarded the papers to the detaining authority and the detaining authority having been satisfied that the petitioner has indulged in blackmarketing activity, passed the order of detention against the petitioner, and the petitioner is accordingly detained by way of preventive detention under the provisions of "PBM.

3. At the time of hearing of the petition, it is argued by the learned Advocate for the petitioner, Mr. Prajapati that the petitioner, at the relevant time, was rendering service as the Chairman of the Society, but he was in no way connected with the day to day affairs of the society. It is also submitted that even otherwise, the petitioner has resigned as Chairman of the Society and he is no more interested to continue as Chairman of the Society in any manner. It is also submitted that even after the aforesaid incident, the concerned department has not cancelled or even suspended the licence given to the fair price shop of the society at any point of time. He, therefore, submitted that if really, the society was dealing in any such illegal activity of blackmarketing atleast the licence was required to be cancelled which is the normal practice so that further damage can be prevented. He further submitted that the authority has also not properly addressed itself as to why the less drastic remedy which was available under law has not been resorted to by cancelling or suspending the licence issued to the Society.

4. I have gone through the order of detention as also the grounds of detention served upon the petitioner alongwith it. I have also noted the contention of the petitioner that he has resigned as a Chairman of the Society and that he is no more interested in the affairs of the Society. It is interesting to note that the

licence is issued in the name of the Society and not to the petitioner in his personal capacity. Till today even the licence issued to the fair price shop of the Society is either cancelled or suspended and there is no explanation coming forth on record explaining this position. The detaining authority has merely made a vague statement in paragraph 6 of the detention order that, no doubt it is true that steps can be taken to cancel the licence of the petitioner, but the petitioner may take appropriate proceedings in the Court and obtain interim order, and therefore, the said remedy is not appropriate remedy. Thus, the detaining authority has not property appreciated the aforesaid aspect and has taken a very casual approach in the matter. Thus, in absence of any logical explanation as to why the less drastic remedy of cancellation of licence is not resorted to by the detaining authority even though available, I am constrained to hold that non consideration of availability of less drastic remedy by the detaining authority has vitiated the subjective satisfaction rendering the detention order invalid. In that view of the matter the impugned order of detention deserves to be quashed and set aside.

It is clarified that the statement of Mr.Prajapati that the petitioner has resigned as Chairman of the Society and shall not deal with any business in connection with the Society is recorded merely for the reason that the learned AGP can point out the same to the concerned Department.

5. On the basis of the aforesaid discussion, the petition is allowed. The order of detention dated 12-11-2002 passed against the petitioner-detenu by the District Magistrate, Kheda at Nadiad, is hereby quashed and set aside. The petitioner-detenu-Babubhai Maganbhai Patel is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J.)

stanley-pbm.